

Message Text

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ACTION L-03

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TO SECSTATE WASHDC NIACT IMMEDIATE 7140

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C O N F I D E N T I A L CAIRO 4126

E.O. 11652: GDS

TAGS: PBOR, MARR, EG

SUBJ: SUEZ CANAL CLEARANCE AND SALVAGE AGREEMENTS

REF: STATE 119151

1. MET WITH MFA LEGAL ADVISER ABDUL HAMID THIS MORNING TO DISCUSS SUBJECTS RAISED REFTEL AND TO PROPOSE NEW LANGUAGE AS SET FORTH PARA 2 REFTEL. IN DOING SO, I AGAIN STRESSED THAT USG DOES NOT AND WILL NOT ASSUME LIABILITY TO THIRD PARTIES IN CONNECTION WITH ITS ASSISTANCE TO EGYPT IN CANAL CLEARANCE SALVAGE. I ALSO POINTED OUT THAT US SERVICE AUTHORITIES HAVE DISCRETIONARY AUTHORITY TO SETTLE SOME THIRD PARTY CLAIMS FOR DAMAGE CAUSED BY OR INCIDENT TO ACTIVITIES OF THE ARMED FORCES AND THAT NEWLY PROPOSED LANGUAGE IS NOT INCONSISTENT WITH EXERCISE OF THIS AUTHORITY IN APPROPRIATE CASES. I ASKED HIM TO GIVE CAREFUL STUDY TO OUR PROPOSAL.

2. ABDUL HAMID SAID HE COULD NOT ACCEPT OUR LANGUAGE. HE INDICATED UNDERSTANDING OF THE USG POSITION ON THIRD PARTY CLAIMS, BUT AGAIN CONTENTED IT SHOULD NOT BE SO BALDLY STATED. MOREOVER, HE REITERATED HIS PREVIOUSLY EXPRESSED CONCERN AT THE REFERENCE TO "SAFETY" OF CONDITIONS OF THE CANAL AND SURROUNDING AREAS. HE
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IS CONCERNED THAT THIS WILL BE INTERPRETED AS RENEGING ON PARA 3

OF OUR NOTE OF APRIL 13. HE RECALLED ADMIRAL MCCAULEY HAD TOLD HIM THAT WHEN THE OPERATION IS COMPLETED, SOME KIND OF A US NAVY CERTIFICATE WILL BE GIVEN SO INDICATING. ABDUL HAMID NOTED THAT THIS CERTIFICATE IS OF CONSIDERABLE POLITICAL AND ECONOMIC IMPORTANCE TO GOE. I AGAIN POINTED OUT TO HIM THAT OUR REFERENCE TO "SAFETY" IS NOT INTENDED TO IMPOSE ON GOE LEGAL RESPONSIBILITY FOR SAFETY OF CANAL IN SENSE OF LIABILITY FOR DAMAGE AND THAT WE WERE NOT REFERRING TO PROBLEM OF MINES AND ORDNANCE. INSTEAD, OUR CONCERN WAS TO APPORTION TASKS TO BE UNDERTAKEN BY THE TWO GOVERNMENTS (PARA 5, STATE 110595). ABDUL HAMID SAID HE UNDERSTOOD THIS, BUT OUR USE OF THE TERM "SAFETY" COULD BE LEGALLY APPLICABLE IN A BROADER SENSE.

3. HE ASKED WHY WE FOUND HIS PROPOSED LANGUAGE FROM THE BRITISH DRAFT UNACCEPTABLE. I POINTED OUT THE LACK OF PARALLELISM RESULTING FROM THE SEVERAL DELETIONS HE HAD PROPOSED. I ALSO NOTED ITS INADEQUACY, IN THE FORM HE HAD GIVEN IT TO US, AS A MEANS OF COVERING SOME OF THE CLAIMS ABOUT WHICH WE ARE CONCERNED. ABDUL HAMID SAID HE PERSONALLY DID NOT AGREE WITH OUR INTERPRETATION. HIS FORMULATION WAS IN NO WAY INTENDED TO EVADE ANY PROPER RESPONSIBILITIES OF THE GOE.

4. SINCE OUR FORMULATION IN REFTEL WAS UNACCEPTABLE, I SOUGHT ON A PERSONAL BASIS TO EXPLORE OTHER POSSIBILITIES. IN THIS CONTEXT, AND IN ORDER TO EXPEDITE CONCLUSION OF THE AGREEMENT PRIOR TO PRESIDENT NIXON'S UPCOMING VISIT, I GOT ABDUL HAMID TO AGREE -- RELUCTANTLY AND AD REFERENDUM -- TO INCLUDE THE ENTIRE PARAS 7 AND 8 OF THE BRITISH DRAFT (ANNEX B) AMENDED TO MEET OUR PARTICULAR REQUIREMENTS. SPECIFICALLY, THE LANGUAGE OF PARA 2 WOULD, UNDER THIS FORMULATION, READ AS FOLLOWS:

QUOTE. CLAIMS (OTHER THAN CONTRACTUAL CLAIMS AND THOSE WAIVED BY THE ARAB REPUBLIC OF EGYPT) ARISING OUT OF ACTS OR OMISSIONS OF A MEMBER OF THE FORCE OR THE UNITED STATES GOVERNMENT DONE IN THE PERFORMANCE OF HIS OFFICIAL DUTY, OR OUT OF ANY OTHER ACT, OMISSION OR OCCURENCE FOR WHICH THE FORCE OR UNITED STATES GOVERNMENT IS LEGALLY RESPONSIBLE, WILL BE DEALT WITH BY THE EGYPTIAN GOVERNMENT AND IN ALL CASES SETTLED AT THE COST OF THE ARAB REPUBLIC OF EGYPT. CLAIMS IN RESPECT OF ACTS OR OMISSIONS OF A MEMBER OF THE FORCE OR UNITED STATES GOVERNMENT ARISING OTHERWISE THAN OUT OF OR IN THE COURSE OF HIS DUTY IN EGYPT MAY AT THE DIS-

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CRETION OF THE UNITED STATES SERVICE AUTHORITIES BE DEALT WITH AND SETTLED BY SUCH AUTHORITIES. UNQUOTE.

5. IT SEEMS TO ME THAT WITH THESE CHANGES, THE ALTERNATIVE LANGUAGE REMOVES THE PROBLEMS OF PARALLELISM AND AMBIGUITY AS SET FORTH REFTEL. IF DEPT/DOD CAN ACCEPT IT, WE CAN GO AHEAD WITHOUT DELAY. ABDUL HAMID CONFIRMED HIS UNDERSTANDING THAT, IF THE EXCHANGE IS CONCLUDED ON THE ABOVE BASIS, FAHMY'S NEW TEXT WOULD

INCLUDE THE NEW ITEMS SET FORTH IN PARA 4 REFTEL EXCEPT FOR PARA 4 A. IN THE CASE OF THE LATTER, THE FORMULATION SET FORTH IN THE PRECEDING PARAGRAPH WOULD BE ADDED TO PARA 2 OF FAHMY'S APRIL 25 NOTE.

6. ABDUL HAMID ALSO AGAIN URGED THAT WE CONCLUDE THE SALVAGE AGREEMENT WITHOUT DELAY. HE LEAVES ON JUNE 15. IF WE HAVE NOT CONCLUDED BOTH OF THESE AGREEMENTS BY THAT DATE, THE ENTIRE SUBJECT WILL BE IN SUSPENSE ANYWHERE FROM SIX WEEKS TO THREE MONTHS WHILE HE IS AWAY. MOREOVER, SINCE ALL HANDS HERE ARE CURRENTLY HEAVILY PREOCCUPIED WITH THE UPCOMING VISIT OF PRESIDENT NIXON, I NEED NIACT-IMMEDIATE REPLY IF WE ARE GOING TO GET THESE AGREEMENTS FINISHED NO LATER THAN TUESDAY.
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